MUNUSAMY SUBRAMANIAM

v.

SAW ENG HOCK & ANOR.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[CIVIL SUIT NO. 363 OF 1984]
2 APRIL 1988

TORT: *Road Accident - Question of liability - Whether defendant encroached onto plaintiff's side of road - Plaintiff took no steps on being aware of possible collision, either to swerve to left, slow down or brake or sound his horn to avoid collision - Whether any contributory negligence.*

The plaintiff's claim is for general and special damages for the injuries and loss alleged to have been suffered and allegedly arising out of the negligence of the defendant.

Held:

[1] Having considered the evidence and submissions and studied the sketch plan and photographs, upon a balance of probabilities the Court accepts the plaintiff's version that it was the defendant who had encroached onto the plaintiff's side of the road resulting in the collision.

[2] The Court also found the plaintiff liable in contribution since apart from the fact that he categorically admitted not being aware of the defendant's presence before the accident until the latter's emergence from behind the trailer, he admitted not having taken any steps, on being aware of the possible collision, in swerving to the left, slowing down or braking or sounding his horn so that the collision could be averted.

[3] In the circumstances, the Court found the defendant to be 70% liable and the plaintiff 30% contributory liable.

[Plaintiff 30% contributory liable. Defendant 70% liable.]

For the plaintiff - Joachim Louis; M/s. Cheang Lee & Ong
For the defendants - P.R. Manecksha; M/s. V.P. Nathan & Partners

JUDGMENT

Abdul Malek Ahmad J:

This is an appeal against my decision holding the defendant 70% liable and the plaintiff 30% liable for the accident between their respective vehicles. I had granted leave to appeal when it was applied for immediately upon the decision being made but having reconsidered the fact that the whole matter actually was dependant solely upon a question of fact, I may have been, having perused the notes of evidence again, in error, in having granted that leave.

The quantum had been agreed to by the parties before the hearing began at RM45,000 only for pain and suffering and loss of amenities inclusive of interest based on 100% liability and later, after the first witness had given evidence, at RM85,000 for the total amount of general and special damages inclusive of interest. In view of this the only issue left to be decided was on the question of liability.

According to the plaintiff, the defendant had overtaken a trailer which had stopped on the defendant's side of the road 50 to 60 feet away from the plaintiff and the sudden emergence of the defendant's motor-van from behind that trailer had caught the plaintiff unaware.

The plaintiff said he did not see the defendant's motor-van before this event as he was concentrating on his side of the road. He also stated that on the defendant suddenly emerging from behind the trailer, he the plaintiff did not do anything as he was shocked. He did not swerve to the left, brake or sound his horn when the defendant encroached onto his side of the road. A scrutiny of the sketch plan and photographs also shows that the plaintiff must have been travelling more near the centre of the road on his side rather than near the left edge of the road as he alleged.

The defendant denied the existence of the trailer and said that the plaintiff was riding rationally on the road from the opposite direction when suddenly for no apparent reason he began to zigzag near the centre white line. Despite the defendant's swerving to the left, slowing down and sounding his horn, the collision took place. The Court is of the view that if the defendant had swerved left before the accident, the position of the vehicles in the sketch plan could not be the way they are considering the fact that the van would have been pushed forward and the motor-cycle pushed backward on impact because of their respective sizes and weights.

Having considered the evidence and the submissions and studied the sketch plan and photographs, upon a balance of probabilities, the Court accepts the plaintiff's version that it was the defendant who had encroached onto the plaintiff's side of the road resulting in the collision but the Court also finds the plaintiff liable in contribution since apart from the fact that he categorically admits not being aware of the defendant's presence before the accident until the latter's emergence from behind the trailer as he was concentrating on oncoming vehicles only on his side of the road, he also admitted not having taken any steps, on being aware of the possible collision, in swerving to the left, slowing down or braking, or sounding his horn so that collision could be averted.

In the circumstances the Court held the defendant to be 70% liable and the plaintiff 30% liable. If I had been in error, it would surely be in not finding the defendant totally liable for the accident.

Also found at [1989] 1 CLJ 40